

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DREW E. BURBRIDGE, et al.,)
)
Plaintiffs,) Case No. 4:17-CV-2482 RLW
)
v.) JURY TRIAL DEMANDED
)
CITY OF ST. LOUIS, et al.,)
)
Defendants.)

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTIONS TO SUSPEND
CASE MANAGEMENT ORDER AND STAY DISCOVERY AND FOR
CONSOLIDATION OF DISCOVERY

Defendants have moved to stay discovery in the above-captioned cause pending disposition of a concurrent motion to consolidate discovery. Defendants have also moved to suspend the case management order in the above-captioned cause pending disposition of the motion to consolidate.

The instant case is one of more than two dozen damages suits brought under 42 U.S.C. §1983, arising out of defendants' efforts to preserve public order in the wake of often violent public demonstrations and protests in 2017, occasioned by the acquittal of a police officer on a charge of murder of a suspected drug dealer. The plaintiffs in this cause have alleged claims that are virtually identical to claims asserted by plaintiffs in the cases identified in the motion to consolidate discovery. All plaintiffs

alleged unconstitutional retaliation for the exercise of First Amendment rights, unconstitutional use of force, unconstitutionality of one or more ordinances of the City of St. Louis, deprivation of liberty without due process, and common law claims, including assault, battery, false imprisonment, infliction of emotional distress, and malicious prosecution. All plaintiffs assert almost identical claims of municipal liability based on custom or policy or failure to train and supervise, against defendant City of St. Louis.

While all plaintiffs in the various pending actions are not represented by the same counsel, all but one of the actions involve the same plaintiffs' counsel. Defendants are entirely represented by the same counsel (with the possible exception of one or two individual defendants who may not be eligible for representation by the City Counselor).

The discovery requested in the above-captioned case will almost certainly have to be duplicated in all of the pending cases, at least insofar as the claims of custom and policy are concerned, and the universe of defense witnesses in all cases will include most (if not all) of highest ranking officers of the division of police of the City, as

well as the commanders and trainers of the "civil disobedience team" of the division of police.

F.R.Civ.P. 42(a) permits consolidation when actions share common questions of law or fact. Consolidation for limited purposes is contemplated by Rule 42(a)(3), providing for orders to "avoid unnecessary cost or delay." This is the sort of "administrative consolidation" that defendants submit is appropriate here. Cf. *Window World of Chicagoland, LLC v. Window World, Inc.*, 811 F.3d 900 (7th Cir. 2016). Defendants acknowledge that considerable discovery has occurred in the above-captioned case, but the delay caused by discovery consolidation will be amply repaid by improved management of all of the cases.

Because motions to dismiss have been filed in the other pending actions, defendants submit that this motion should be held in abeyance until resolution of those motions. However, defendants considered that it was advisable to advance this motion at the earliest practicable date, so as to avoid delay in the event the other cases proceed. It is certainly within the Court's discretion to order discovery consolidation conditionally, with submission of a plan under Rule 26(f)(3) to occur within a specified time after disposition of all motions to dismiss. In the event all the other cases are dismissed,

the parties to the above-captioned case can proceed expeditiously to complete any remaining discovery.

For the foregoing reasons, defendants submit that the case management order in this cause should be suspended, that further discovery should be stayed temporarily, and that consolidation of discovery should be ordered in the cases identified in the motion filed herewith, with a discovery plan to be submitted at the earliest practicable time after disposition of the motions to dismiss.

Respectfully submitted,
JULIAN L. BUSH
CITY COUNSELOR

/s/ Robert H. Dierker
Robert H. Dierker 23671MO
Associate City Counselor
dierkerr@stlouis-mo.gov
Abby Duncan 67766MO
Assistant City Counselor
Meghan Bruyns 69987MO
Assistant City Counselor
Amy Raimondo 71291MO
Assistant City Counselor
1200 Market St.
City Hall, Rm 314
St. Louis, MO 63103
314-622-3361
Fax 314-622-4956

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2019, the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Court's electronic filing system.

/s/ Robert H. Dierker 23671MO